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Department of Correction vs. Elishea Fisher

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:)
)
DEPARTMENT OF CORRECTION)
Petitioner)
)
v.)
)
ELISHEA FISHER,)
Grievant)
)
)

DOCKET NO. 26.05-110432J

INITIAL ORDER

This matter came to be heard on August, 29, 2012, before Marion P. Wall, Administrative Judge, Administrative Procedures Division, Office of the Secretary of State, sitting for the Tennessee Civil Service Commission. The Department of Correction was represented by Ms. Teresa Thomas, Assistant General Counsel. The Grievant, Ms. Elishea Fisher, was represented by Mr. Jonathan Stephens of the Nashville Bar. The matter became ready for decision on June 17, 2009, when the transcript was filed.

This issue in this case is Grievant's appeal of her termination for allegedly having an improper relationship with an inmate, in violation of Department policies and rules.

After consideration of the entire record and the arguments of counsel, it is concluded that Grievant did, in fact, have an improper relationship with an inmate. It is further concluded that termination is the appropriate sanction. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant was at all pertinent times employed by Petitioner as a Correctional Officer at the Northwest Correctional Center.

2. Sometime in early 1999, Grievant began a romantic relationship with Mr. Kinvotie Campbell. Grievant was not employed by the Department at that time. When the relationship began, Grievant was apparently not aware of Mr. Campbell's criminal record.

3. About July of 2001, Mr. Campbell was arrested and charged with criminal conduct related to the sale and/or possession of drugs. Grievant was also arrested, but her charges were dismissed. By this time, Grievant was employed by the Department. She notified the warden of her arrest, and the dismissal of her charges. No disciplinary action was taken on the arrest.

4. Mr. Campbell's charges were not dismissed; he was convicted and incarcerated, albeit in a different facility than that in which Grievant worked. After he was released, he was on probation. He resumed his relationship with the Grievant. The two had a child together on November 10, 2007. Although the Grievant said the romantic relationship had ended by the end of 2007, Mr. Campbell was observed at her home after that time by his probation officer. Indeed, the probation officer was told he lived with her. Grievant came to the probation office once to inquire as to Mr. Campbell's supervision.¹

¹ It is noted that Mr. Campbell was required to pay child support, and had regular visitation rights, which could account for his mere presence at one time in Grievant's home; however, the probation officer was told he lived there.

5. At any rate, the evidence is clear, and there is no actual dispute, that Grievant knowingly had a romantic relationship with someone in the custody of the Department (being on probation upon release means the Department still has custody of the offender).

6. Grievant's counsel argues that leniency should be shown because the relationship began before Grievant was employed by the Department, and that Grievant was therefore called upon to choose between the father of her child and her job. Actually, she chose to resume the relationship upon his release, and the child came later. Thus, she knowingly began, or resumed, the relationship after his release, when she knew he was on probation and therefore still subject to the Department's custody.

7. Grievant has received a previous disciplinary action on grounds not germane to the present issue.

8. Policy 305.03D prohibits social relationships, including but not limited to emotional, sexual, or romantic attachments with offenders in an institution, offenders on parole or probation, and former inmates who have been discharged for TDOC custody or probation/parole for less than one year.

9. Grievant knowingly, and intentionally, violated this policy. She had been instructed in this policy, and had signed an acknowledgement of her instruction in the Department's policies.

CONCLUSIONS OF LAW

1. The Department has the burden of proof, by a preponderance of the evidence.

2. The Department has proven, by a preponderance of the evidence, that the Grievant had an improper relationship with a person in the custody of the Department, in violation of the above policy. There is no dispute as to this, really.

3. These actions constitute grounds for discipline under the Civil Service Rules. She intentionally violated Department Policies regarding relationships with offenders.

4. TCA § 8-30-330(a) requires that any discipline imposed be imposed at the lowest appropriate step for each area of misconduct. TCA § 8-30-330(c) provides that subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a). In determining that termination was the appropriate sanction, the Warden stated that Grievant had made it impossible to carry out her duties. This reasoning is persuasive. Grievant knew of the problems that can arise from this sort of relationship; she was arrested with Mr. Campbell. Nevertheless, she chose to resume the relationship upon his release. Grievant argues she was forced to choose between the father of her child and her job. She was, and she tried to choose both. This contested case makes the choice for her. Termination is the appropriate sanction for intentional, flagrant violation of a policy that goes to the heart of maintaining a professional correctional staff and maintaining the integrity of the Department's supervision of its

inmates. Therefore, it is ORDERED that the termination previously imposed in this matter be UPHeld.

This Order entered and effective this _____ day of _____, 2013.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of _____, 2013.

Thomas G. Stovall, Director
Administrative Procedures Division